

No. 4780

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**UNION OF SOUTH AFRICA  
and  
AUSTRALIA**

**Exchange of notes constituting an agreement relating to  
air services. Cape Town, 26 September 1958**

*Official text: English.*

*Registered by the International Civil Aviation Organization on 17 June 1959.*

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**UNION SUD-AFRICAINE  
et  
AUSTRALIE**

**Échange de notes constituant un accord relatif aux services  
aériens. Le Cap, 26 septembre 1958**

*Texte officiel anglais.*

*Enregistré par l'Organisation de l'aviation civile internationale le 17 juin 1959.*

No. 4780. EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT<sup>1</sup> BETWEEN THE GOVERNMENT OF THE UNION OF SOUTH AFRICA AND THE GOVERNMENT OF AUSTRALIA RELATING TO AIR SERVICES. CAPE TOWN, 26 SEPTEMBER 1958

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I

OFFICE OF THE HIGH COMMISSIONER FOR AUSTRALIA  
IN THE UNION OF SOUTH AFRICA  
CAPE TOWN

No. 53/1

26th September, 1958

Sir,

I have the honour to refer to the Agreement of 4th November, 1955,<sup>2</sup> between our two Governments relating to air services between the respective territories of our two countries.

As you are aware, Qantas Empire Airways Ltd. has operated such services since September, 1952, as the airline designated by the Australian Government in accordance with the terms of the Agreement and your Government has recently designated South African Airways to operate such services as from November, 1957.

Furthermore our two Governments have agreed in principle that the services operated by Qantas Empire Airways Ltd. and South African Airways shall be operated under parallel partnership arrangements to be incorporated in an agreement between the airlines abovementioned.

As paragraph 3 of Article 2 of the Agreement provides that the Agreement shall be subject to review in the event of the designation by your Government of an airline to operate an air service between our two countries, and as the decision of our two Governments concerning parallel partnership operations by the designated airlines has also made such revision desirable, representatives of our two Governments have met recently to conduct a review of the Agreement.

I now have the honour to record hereunder my Government's understanding of the Agreement reached between our two Governments for the continuation of air services between the respective territories of our two countries by the designated airlines.

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<sup>1</sup> Deemed to have come into force on 25 November 1957, in accordance with article 15.

<sup>2</sup> United Nations, *Treaty Series*, Vol. 232, p. 143.

*Article 1*

For the purpose of this Agreement, unless the context otherwise requires :

- (a) the term “ territory ” in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection, administration or trusteeship of that State;
- (b) the term “ air service ” means any scheduled air service performed by aircraft for the public transport of passengers, cargo or mail;
- (c) the term “ international air service ” means an air service which passes through the air space over the territory of more than one State; and
- (d) the term “ airline ” means any air transport enterprise offering or operating an international air service.

*Article 2*

To the extent to which they are applicable to the air services established under this Agreement, the provisions of the convention on International Civil Aviation signed at Chicago on 7th December, 1944<sup>1</sup> (hereinafter called “ the Convention ”) shall remain in force in their present form as between the Contracting Parties for the duration of this Agreement as if they were incorporated herein, unless both Contracting Parties ratify any amendment to the Convention which shall have come into force, in which case the Convention as amended shall remain in force as aforesaid.

*Article 3*

(1) The Government of the Commonwealth of Australia agrees to an air service being operated by an airline designated by the Government of the Union of South Africa on the route specified in paragraph (1) of Article 6.

Substantial ownership and effective control of the airline designated by the Government of the Union of South Africa shall be and shall continue to be vested in citizens of the Union of South Africa.

*Article 4*

(1) The Government of the Union of South Africa agrees to an air service being operated by an airline designated by the Government of the Commonwealth of Australia on the route specified in paragraph (1) of Article 5.

(2) Substantial ownership and effective control of the airline designated by the Government of the Commonwealth of Australia shall be and shall continue to be vested in citizens of the Commonwealth of Australia.

*Article 5*

(1) The air service undertaken by the airline designated by the Government of the Commonwealth of Australia shall be operated on the following route in both directions—  
Australia–Cocos (Keeling) Islands–Mauritius–Johannesburg.

<sup>1</sup> See footnote 2, p. 4 of this volume.

(2) Any or all of the points on the route specified in paragraph (1) may be omitted on any or all flights at the option of the airline designated by the Government of the Commonwealth of Australia.

#### *Article 6*

(1) The air service undertaken by the airline designated by the Government of the Union of South Africa shall be operated on the following route in both directions—

Union of South Africa—Mauritius—Cocos (Keeling) Islands—Perth.

(2) Any or all of the points on the route specified in paragraph (1) may be omitted on any or all flights at the option of the airline designated by the Government of the Union of South Africa.

#### *Article 7*

(1) The airline designated by the Government of the Commonwealth of Australia may set down or pick up international traffic from or for territory of the Union of South Africa at any point on the route set out in paragraph (1) of Article 5.

(2) The airline designated by the Government of the Union of South Africa may set down or pick up international traffic from or for territory of the Commonwealth of Australia at any point on the route set out in paragraph (1) of Article 6.

#### *Article 8*

(1) The frequency of the air service provided by the airline designated by the Government of the Commonwealth of Australia shall be once per fortnight.

(2) The frequency of the air service provided by the airline designated by the Government of the Union of South Africa shall be once per fortnight.

(3) The airline referred to in paragraphs (1) and (2) shall operate their fortnightly air services in alternate weeks.

#### *Article 9*

The services provided, in terms of this Agreement, by the airlines designated by the Government of the Commonwealth of Australia and by the Government of the Union of South Africa shall be operated under a parallel partnership agreement according to arrangements to be incorporated in an agreement between those airlines which shall be subject to the approval of the competent authority of each Government.

#### *Article 10*

(1) Notwithstanding the provisions of paragraph (1) of Article 7 the airline designated by the Government of the Commonwealth of Australia shall not at Johannesburg pick up or set down more than 80 passengers on any one flight and there shall be no carry-over of unused passenger capacity from one flight to any other flight.

(2) Notwithstanding the provisions of paragraph (2) of Article 7 the airline designated by the Government of the Union of South Africa shall not at Perth pick up or set down more than 80 passengers on any one flight and there shall be no carry-over of unused passenger capacity from one flight to any other flight.

#### *Article 11*

(1) The tariffs to be charged by the airlines designated in terms of this Agreement for carriage on the air services specified herein shall be fixed at reasonable levels and shall have regard to any relevant rates adopted by the International Air Transport Association.

(2) The tariffs mentioned in paragraph (1) shall be subject to approval by the Government of the Commonwealth of Australia and the Government of the Union of South Africa.

#### *Article 12*

(1) The airline designated by the Government of the Commonwealth of Australia shall, upon request, supply to the Secretary for Transport of the Union of South Africa such periodic or other statement of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the services operated in terms of this Agreement.

(2) The airline designated by the Government of the Union of South Africa shall, upon request, supply to the Director-General of Civil Aviation of the Commonwealth of Australia such periodic or other statement of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the services operated in terms of this Agreement.

(3) The statements referred to in paragraphs (1) and (2) shall include information relating to the amount of traffic carried on the services operated in terms of this Agreement.

(4) Discussions between representatives of the Government of the Commonwealth of Australia and representatives of the Government of the Union of South Africa for the purpose of reviewing the position in the light of traffic statistics shall take place when requested by either Government.

#### *Article 13*

A party to this Agreement shall have the right to suspend the air service operated in terms of this Agreement by the airline designated by the other party to this Agreement if that airline fails to comply with any law or regulation of the first-mentioned party to this Agreement or fails to comply with any term or condition prescribed in this Agreement: Provided that unless immediate suspension is essential to prevent further infringement of a law or regulation or term or condition abovementioned this right shall be exercised only after consultation with the other party to this Agreement.

#### *Article 14*

If either of the parties to this Agreement consider it desirable to amend any provision thereof such amendment, if agreed upon by such parties, shall come into effect when confirmed by an Exchange of Notes.

*Article 15*

(1) This Agreement shall be deemed to have come into force on the twenty-fifth day of November, 1957, and shall remain in force indefinitely unless six months' notice in writing of termination is given by either party to the other.

(2) As from the date mentioned in paragraph (1) this Agreement shall supersede the Agreement entered into at Pretoria between the Government of the Commonwealth of Australia and the Government of the Union of South Africa on the fourth day of November, 1955.

If the foregoing is also the understanding of your Government, I have the honour to propose that this Note and your confirmatory reply thereto shall be deemed to constitute and evidence an Agreement between our two Governments.

Please accept, Sir, the renewed assurance of my highest consideration.

(Signed) H. GILCHRIST  
Acting High Commissioner

The Acting Secretary of the Department  
of External Affairs of the Government of the Union  
of South Africa  
Cape Town

## II

23/29/1

Cape Town, 26th September, 1958

Sir,

I have the honour to acknowledge the receipt of your Note No. 53/1 of the 26th September, 1958, the text of which reads as follows :

[See note I]

In reply thereto I have the honour to state that the Government of the Union of South Africa is in agreement with the foregoing proposals and that your Note and this confirmatory reply are regarded as constituting an Agreement between our two Governments.

Please accept, Sir, the renewed assurance of my high consideration.

(Signed) W. C. NAUDE  
Acting Secretary for External Affairs

H. Gilchrist Esq.  
Acting High Commissioner for Australia  
Cape Town